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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COALITION TO DEFEND AFFIRMATIVE ACTION, et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER, et al., Defendants, and WARD CONNERLY, AMERICAN CIVIL RIGHTS FOUNDATION, a nonprofit public benefit corporation, and CALIFORNIA ASSOCIATION OF SCHOLARS, Proposed Defendant-Intervenors.	No. 3:10-cv-00641-SC **DECLARATION OF DIANE SCHACHTERLE ON BEHALF OF AMERICAN CIVIL RIGHTS FOUNDATION IN SUPPORT OF MOTION TO INTERVENE** Date: July 23, 2010 Time: 10:00 a.m. Place: Department 1 Judge: The Hon. Samuel Conti

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I, Diane Schachterle, do hereby declare:

1. I have personal knowledge of the following facts and if called upon to do so, could competently testify to the facts contained herein.

2. This lawsuit was filed on February 16, 2010, in the United States District Court, Northern District of California. This lawsuit challenges the validity of Article I, section 31, of the California Constitution, duly enacted by the voters of California in 1996 as Proposition 209.

3. I am a dues-paying member and a board member of the American Civil Rights Foundation (ACRF). I am also the Secretary/Treasurer of ACRF. ACRF is a California nonprofit public interest corporation existing under Section 501(c)(3) of the Internal Revenue Code. ACRF is dedicated to eradicating practices of racial discrimination and preferences by government entities such as the State of California, and to enforcing laws prohibiting race- and sex-based discrimination and preferences in public education, employment, and contracting.

4. ACRF members include individuals who are citizens, residents, taxpayers, and property owners in the State of California. ACRF members include students who want to attend the University of California, including students who have applied, or who plan to apply, to the University of California. ACRF members also include parents of students who want to attend the University of California. The members of ACRF, including students and their parents, want students' applications to the University of California reviewed in a fair and color-blind manner, without regard to students' race. These members have an interest in the continuation and enforcement of Proposition 209, stemming from their desire to be treated equally in the admissions process. ACRF is authorized by its members to bring litigation affecting the interests of members in California.

5. Because ACRF's mission is to enforce civil rights law at all levels of government, ACRF and its members are intensely interested in ensuring that Proposition 209 is upheld and enforced.

6. I am familiar with the public statements made by many of the named Defendants in this action. As a result of ACRF's interest in the adoption and enforcement of civil rights laws, ACRF has a legitimate interest in seeing Proposition 209 enforced. I believe that the interest that

ACRF has in establishing and protecting the constitutional validity of Proposition 209 will not be adequately protected by the named Defendants. Plaintiffs' Complaint has put ACRF on notice that the named Defendants will not adequately represent ACRF's interest to ensure the constitutionality of Section 31. For example, the Complaint states that, "Many top UC officials have called for the repeal of Proposition 209," and, "The Attorney General has informed the California Supreme Court that Proposition 209 violates the Fourteenth Amendment." Compl. ¶¶ 32, 33. Moreover, Defendant Schwarzenegger is currently named as a Defendant in a state court case alleging that Assembly Bill No. ABX421 (AB 21), mandating race- and sex-based quotas when awarding public contracts, is in violation of Section 31. *Connerly v. State*, No. 34-2010-80000412 (Sacramento County Super. Ct. filed Jan. 6, 2010). Additionally, Attorney General Jerry Brown has explicitly argued, in filed court documents, that Section 31 is unconstitutional. *Coral Constr., Inc. v. City & County of San Francisco*, No. S152934 (Cal. filed May 25, 2007). The Board of Regents, also, have taken steps to circumvent Section 31. The Regents and President Yudof have expressed support for admissions procedures explicitly intended to avoid Section 31's restrictions and requirements. *See* Compl. ¶ 31.

7. ACRF has been involved in litigation to ensure that California State agencies comply with Section 31, including *ACRF v. City of Oakland*, No. RG07334277 (Alameda County Super. Ct. filed July 6, 2007) (challenging the constitutionality of Oakland's Airport Concession Disadvantaged Business Enterprise Program on the grounds that it violates Section 31); *ACRF v. Los Angeles Unified Sch. Dist.*, 169 Cal. App. 4th 436 (2008) (addressing whether a desegregation order meets an exception of Section 31); and *ACRF v. Berkeley Unified Sch. Dist.*, 172 Cal. App. 4th 207 (2009) (challenging a school assignment plan as violating Section 31).

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, and that this declaration was executed this 3RD day of June, 2010, at Sacramento, California.

Diane Schachterle
DIANE SCHACHTERLE

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